IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4729 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIPTIBEN D JADHAV - Petitioner(s)
Versus
THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR UM SHASTRI for Petitioner(s) : 1,
MR KL PANDYA, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 29/11/2007

ORAL JUDGMENT

1. **Rule**. Mr.Pandya, learned AGP waives service of notice of rule for the State and with the

consent of the learned Counsel appearing for both the sides, the matter is finally heard today.

2. The short facts of the case appear to be that on 4.2.2005, the husband of the petitioner, while was in service as writer, expired. On 19.3.2005 the petitioner made application for compassionate appointment. On 23.1.2006, the respondent No.4 forwarded the petitioner's application to respondent No.3 and on 23.2.2006, the petitioner was informed that the application of the petitioner was rejected on the ground that the petitioner was above the prescribed age limit. It appears that the petitioner earlier approached this Court by challenging the said decision by preferring the petition being Special Civil Application No.25990 of 2006 and this Court directed for making representation and the State Government was directed to decide the same. Thereafter, on 5.2.2007 the State Government decided the matter and once again confirmed the earlier decision and it is under these circumstances, the petitioner is

constrained to prefer the petition once again.

3. Heard Mr.Shastri, learned Counsel appearing for the petitioner and Mr.Pandya, learned AGP for the respondent authorities and the State.

4. It appears that the application of the petitioner has been rejected by the last order of the State Government mainly on two grounds; one is that the petitioner is aged 48 years and, therefore, the original provision of relaxation of the age is maintained and the second is that the family of the petitioner was paid the retiral benefits of about Rs.4,00,000/- and the pension is being paid of Rs.2,800/- p.m. and, therefore, the financial condition of the family cannot be said as pitiable.

5. Concerning the second ground of financial condition due to the payment of retiral benefits is concerned, such was provided in the earlier resolution and ultimately vide resolution dated 10.3.2000, the income limit is deleted and fresh instructions are issued. Therefore, the ground mentioned by the State Government for rejecting the application due to payment of retiral

benefits is extraneous to the Government policy and the resolution and, therefore, cannot be sustained.

6. On the aspects of age limit in the resolution dated 10.3.2000 vide Clause No.6(e)(2), it has been provided that relaxation may be available for 20 years, than the prescribed age limit, or up to 45 years of age, whichever is less. However, in Clause No.9 of the said resolution, it has further been provided that if the deceased government employee was the only earning member, then while giving appointment to the widow on compassionate ground, the relaxation can be made of the aforesaid upper limit of the relaxation as provided in Clause No.6(e)(2), but with the prior approval of the State Government. The aforesaid aspect is not modified in the subsequent resolution dated 7.9.2002, which has been referred to by the State Government. Therefore, there is non-application of mind on the part of the State Government for not considering that as per the above referred two resolutions, with the prior

approval of the State Government, relaxation in the age limit can be provided.

7. It deserves to be recorded that the essential purpose of compassionate appointment is to give benefit to the family members of the deceased government employee at the earliest for financial support to the family. Therefore, such application is required to be decided as early as possible. Otherwise, the very purpose of giving compassionate appointment would be frustrated.

8. As in the present case, both the grounds on which both the applications are rejected, are not only without proper application of mind, but are contrary to the Government Policy and the above referred resolutions and as it is a recent case of death of a government employee on 4.2.2005 for which compassionate appointment is applied, while quashing the order of the State Government, it would be just and proper to direct the State Government to decide the application within a stipulated time limit.

9. In the result, the impugned order of the

Authority rejecting the application for compassionate appointment of the petitioner and its confirmation thereof by the State Government vide order dated 2.5.2007 are quashed and set aside with the further direction that the application for compassionate appointment shall be decided by the State Government, keeping in view the observations made by this Court in the present judgement, as early as possible and, in any case, not later than three months from the date of receipt of the order of this Court.

10. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to cost. Direct service is permitted.

29.11.2007 **(Jayant Patel, J.)**

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